



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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COURT OF ENQUIRY 1279
of
MOTORSPORT SOUTH AFRICA

Hearing date: 19 September 2024

Decision date: 17 October 2024

Held virtually on Zoom and recorded.

Court composition:	Adv. Veruschka September	: Court President
	Mr. Wayne Riddell	: Court Member
	Ms. Nthabiseng Motsie	: Court Member
Attendance:	Mr Harm Beens Snr	Respondent
	Mr Shakes Mphahlele	Security Guard
	Mr Gert Botes	Witness, Clerk of Course
	Ms. Ursula Meadows	Witness, Operations Director Zwartkops
	Mrs. Jackie Robinson	Witness
	Ms. Tanya Human	CEO Zwartkops
	Mr Gavin De Villiers	Director Skyrall Security
	Ms. Samantha Van Reenen	MSA Sporting Services Manager: Cars, Karting and Legal
	Mrs. Allison Vogelsang	MSA Circuit Racing Co-Ordinator

MOTORSPORT SOUTH AFRICA IS THE ONLY RECOGNISED MOTORSPORT FEDERATION IN SOUTH AFRICA



MEMBER OF



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Sport, Arts and Culture
REPUBLIC OF SOUTH AFRICA

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Mrs. D Abrahams, Mrs. D. Ballington, K. Govender, Ms. T. Human, Mrs. S Labuscagne Jonck, V. Maharaj (Executive), D. Ramchander, M. Rowe, G. Waberski
Honorary President: R. Schilling

DECISION

INTRODUCTION

1. The Court was convened as a formal enquiry in terms of GCR 211 of the Motorsport South Africa NPC (“MSA”) General Competition Rules (“GCRs”) based on reports submitted to MSA into the alleged conduct of Mr Harm Beens Snr (“Mr Beens”) at the Regional Historic / Inland Tour held at Zwartkops Raceway on 24 August 2024.
2. The Court was called upon to fully investigate the alleged altercation incident between Mr Beens and Mr Shakes Mphahlele (“Mr Mphahlele”) to:
 - 2.1 determine if Mr Harms, based on his conduct, is guilty of breaching amongst other things GCRs 172 iv) and vi)¹; and
 - 2.2 determine what action to take in response to its findings concerning the above.
3. The virtual hearing was held and recorded on Thursday, 19 September 2024. Proper notice to attend the hearing had been given to, amongst others, Mr Beens, Mr Mphahlele and the witnesses. As an enquiry, the Court adopted an inquisitorial approach. Nobody challenged the composition of the Court.
4. Prior to the hearing, the Court received and considered documents, written submissions and attachments from MSA which included *inter alia* written submissions from Mr. Mphahlele, Mr Beens, Mr. Gert Botes (“Mr Botes”), Ms. Jacqueline Ann Robinson (“Ms. Robinson”) and Ms. Ursula Meadows (“Ms. Meadows”). At the hearing on 19 September 2024, the process was explained to all present; each of these individuals were given an opportunity to be heard after they chose to confirm the contents of their respective written submission without any changes; and they each addressed questions asked by the Court. Nobody took issue at any stage on the process adopted.

¹ GCR 172. BREACH OF RULES

Any of the following offences in addition to any other offences specifically referred to previously or hereafter, shall be deemed to be a breach of these rules.

- iv) Any proceeding or act prejudicial to the interests of MSA or of motor sport generally shall be deemed to be a breach of the regulations and disciplinary action may be taken against offenders.

By way of clarification, it is confirmed that the following shall be included in the definition of “prejudicial acts” as per the above:

- Intimidation, either on track or off track.
- Verbal and or physical abuse.
- ...
- Acts (including comments or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

It is stressed that the above list is not exhaustive, and that each case will be treated on an individual basis.

v)

...

- vi) Misbehaviour or unfair practice.

THE BACKGROUND FACTS

5. On 14 August 2024, Mr Beens entered, as a competitor, to compete in the Evapco Pursuit Challenge in the Regional Historic / Inland Tour (*"the Event"*) to be held at Zwartkops Raceway on 23 and 24 August 2024. When signing his Official Entry Form, he undertook, amongst other things, that:

"I/We have read and understood GCR's 93, 94, 113, 121 and 122 of the MSA Handbook and signify my/our agreement to abide by these Rules by signing this entry form."

6. A WhatsApp Group was created for the Event in substantial compliance with GCR 17 (*"the official WhatsApp Group"*) read with Regulation 19 of the Supplementary Regulations (*"SRs"*). On 21 August 2024, a certain *'Schultz Swanepoel'* posted a document on the official WhatsApp Group titled *'Final Instructions MSA Permit no 17692'* (*"the Final Instructions"*). Germane parts of this document read:

"2. PADDOCK AND PIT AREAS

- Pit Road must be kept clear at all times. After the start of practice, no unloading and loading of vehicles will be allowed on pit road, until after the last race has started.*

3. Pre-Race paddock

All vehicles must line up in Pre-Race Paddock. Before your race, ensure that you have your correct grid position.

Note!! No vehicle may enter the circuit via the gate on the north side of the pits next to the marshal's office."

7. On 24 August 2024, Ms Tanya Human posted the following messages in the official WhatsApp Group:

At 16:12pm: "NO TRAILERS IN THE PIT UNTIL THE START OF THE LAST RACE".

At 17:39pm: "You may collect trailers now".

8. On 24 August 2024, the incident under enquiry took place between Mr Beens and Mr Mphahlele.

9. On 24 August 2024, a Clerk of the Court Report was prepared and signed which records as written, amongst other things, that:

*"Complaint against driver of car 11
Official
abuse shouting all sorted"*

THE EVIDENCE

10. The summaries of evidence below are not exhaustive and have been informed by the written and oral submissions given at the hearing.

11. **Mr Gert Botes (“Mr Botes”)** gave evidence to the effect that:

11.1 He was a Category Clerk of the Course for Historic Racing South Africa (“HRSA”) - in which Mr Beens participated - and Pursuit at the Event on 24 August 2024.

11.2 He was unaware that the incident under enquiry had occurred. There was no report to him on this specific incident.

11.3 He confirms that HRSA club members are told to read the applicable SRs, the Final Instructions and all notices posted on the official WhatsApp Group.

11.4 Mr Beens, as a participant, must know all the rules applicable to the Event.

11.5 It is a well-known rule that one is not allowed to bring one’s trailer into the Pit Area until the last event. The SRs and the Final Instructions communicates the requirements. **Ms Tanya Human**, CEO of Zwartkops, clarified in the hearing that the relevant time is “the start of the last race” as per her WhatsApp message posted on the official WhatsApp Group. Ms Human also confirmed that SRs19 includes a link for participants in the Event to join the official WhatsApp Group.

11.6 Security at an event do important work. They do crowd control and get instructions from their superiors on the rights of access by trailers into the Pit Area.

11.7 There is no excuse to enter the Pit Area when not permitted to do so. To do so creates chaos in a limited space and compromises safety while a race is still ongoing.

11.8 HRSA does not condone behaviour such as the conduct of Mr Beens.

12. **Mr Shakes Mphahlele (“Mr Mphahlele”)** gave evidence to the effect that:

12.1 He is employed by Skyral Security. He was on duty at approximately 16h45 on 24 August 2024 when one of the race drivers (subsequently identified as Mr Beens) wanted to enter the Pit Area with a trailer when he, and another security guard, were busy locking the gate. He stopped Mr Beens because he was under strict SOP that no vehicles were allowed within the Pit Area during the race.

12.2 Mr Beens tried to push the gate open and force entry into the Pit Area. Another vehicle tried to enter too but that driver agreed to wait.

12.3 Mr Beens jumped out of his vehicle and started to swear at him who then became agitated and started assaulting him. He did his best to calm Mr Beens down but he continued with the assault.

12.4 Thereafter, “Ms Ursula” came and informed Mr Beens that he was only doing what his job required and that Mr Beens was doing wrong. Mr Beens continued with his verbal abuse even though he was told to stop.

12.5 Mr Beens acted very unprofessionally and refused to comply with the rules of the event.

- 12.6 He injured his right ankle and leg when he stepped back to avoid contact with Mr Beens trying to physically attack him.
- 12.7 He chose not to open a case of assault so he left it in the hands of Zwartkop's Management to deal with the matter.
- 12.8 He understands the rule to be that access to the Pit Area is allowed after the last race has started.
- 12.9 The incident happened in the presence of "Ms Ursula" and other security guards (who gave no evidence).
- 12.10 He clarified that if he does not follow the SOP, he will lose his job.
13. Apart from referring to "Ms Ursula" who Ms Robinson informed in the hearing referred to herself instead, the Court finds Mr Mphahlele's evidence consistent.
14. **Ms Ursula Meadows ("Ms. Meadows")** is the Operations Director for Zwartkops. She witnessed the incident on 24 August 2024. Her evidence in this regard was to the effect as follows:
- 14.1 At about 17h00pm on 24 August 2024, she was on her way from the Zwartkops Canteen area to where her vehicle was parked at the ZOC Clubhouse area to go home. When walking from the canteen side to the gate entrance at the Kart Circuit, she noticed that there was quite a lot of people at the gate entrance to the Pit Area. Mr Beens was blocking the exit. He was in confrontation with Mr Mphahlele.
- 14.2 Mr Beens was swearing at Mr Mphahlele and yelling at him to open the gate. Mr Mphahlele kept on informing him that the gate cannot be opened until confirmation is received that he is allowed to open the gates.
- 14.3 By this time, Mr Beens acted quite aggressively towards Mr Mphahlele, "swinging" trying to hit Mr Mphahlele who stepped back trying to avoid "the blows". By the time that she reached them, people trying to exit could not do so because Mr Beens blocked the exit and refused to move his vehicle and trailer.
- 14.4 Mr Beens then engaged in an altercation with Ms Robinson who told him that the security personnel were just doing their jobs and that he needed to calm down. In response, Mr Beens "got right up in her face, making rude comments". At that stage, she did not get involved but it was upsetting to observe.
- 14.5 Mr Beens then aggressively reversed his vehicle with the trailer and proceeded to speed up the hill to the entrance at the other gate situated at the SuperHatch area. She continued in the same direction witnessing Mr Beens driving recklessly, almost "hitting" numerous vehicles parked alongside the road with his trailer.
- 14.6 When she arrived at her vehicle which was not far away, she saw Mr Beens aggressively forcing the gate open. The security guard and one of Zwartkops employees tried closing the gate again and after some struggle he managed to push open the gate.
- 14.7 She then proceeded to stand in front of Mr Beens' vehicle to block him from entering with his trailer. Mr Beens confronted her saying things of which she cannot remember the detail. She informed Mr Beens to stop what he is doing and if not, she will have him removed from the site. Mr Beens informed her that it is 17h02pm and that he is allowed to take his trailer through the gates to collect his vehicle.
- 14.8 She informed him, whilst he was busy screaming at everybody, that he is not allowed to take his trailer through the gate yet because it was not the last race of the day, that the

- programme is running late and that he needed to follow the races and not the programme.
- 14.9 She clarified that trailers are only allowed in the Pit Area at the start of the last race of the day. By that time, 2 or 3 races were left before the end of the day. Mr Beens, however, was not listening to anyone and ignored everything being said to him.
- 14.10 She had by this stage informed Mr Beens that his behaviour was shocking and that he needed to calm himself down. This afforded time for the gate to be closed.
- 14.11 Mr Beens acted very aggressively towards both Zwartkops personnel and security. Not once did she act aggressively towards Mr Beens, only reacting on his aggressive behaviour.
- 14.12 She instructed that the gate be kept closed until confirmation is received that trailers are permitted to collect vehicles.
- 14.13 Mr Beens's behaviour was very upsetting to her.
- 14.14 As part of her written submission, she provided two instructive photographs in addition to an aerial photograph of where the incidents occurred.
15. Ms Meadows impressed to be a credible witness.
16. **Ms. Jacqueline Ann Robinson ("Ms. Robinson")** is a mother of two minor competitors who competed at the Event on 24 August 2024. She witnessed the incident on the day. Her evidence in this regard was to the effect as follows:
- 16.1 In trying to exit the Pit Area in the afternoon, a vehicle towing an empty trailer blocked the entry/exit security gate which was parked on the other side of the gate. The driver of the vehicle blocking the gate (subsequently identified as Mr Beens) was out of his vehicle having a verbal disagreement with one of the security guards (identified as Mr Mphahlele).
- 16.2 She understood that up until a certain time, no vehicles with trailers are allowed to enter the Pit Area; Mr Beens was trying to gain access before the time; and the security guard was refusing him entry.
- 16.3 Mr Beens then started getting extremely aggressive and forcefully slammed the exit gate open with no regard for any bystander. He was very angry. He then proceeded to run at Mr Mphahlele and attempted to physically assault him. She cannot recall seeing any physical contact but Mr Mphahlele had to jump and run out of the way to avoid being physically assaulted by Mr Beens.
- 16.4 By this time, she had climbed out of her vehicle and was extremely upset by Mr Beens's behaviour and approached him herself. She tried to explain to him that Mr Mphahlele was just doing his job and she asked Mr Beens to leave him alone and to move his vehicle out of the way because he was blocking all the vehicles trying to exit the Pit Area. Mr Beens however continued to shout, swear and make a scene until he realised that he was not going to gain access to the Pit Area. He then moved his vehicle out of the way, driving very aggressively with little regard for bystanders.
- 16.5 Her understanding is that access to the Pit Area is only after the last race is done.
- 16.6 Mr Beens had shouted at her too and "got into her face" but she did not feel threatened by him.
- 16.7 Mr Beens's behaviour was very aggressive and very upsetting to her.

17. Ms Robinson impressed to be a credible witness.
18. **Mr Harm Beens Snr (“Mr Beens”)** was the last person to give evidence and in doing so, he had an opportunity to hear and consider the allegations against him before presenting his case in response to it. He gave evidence to the effect that:
 - 18.1 He fully understands the allegations against him.
 - 18.2 After the race on 24 August 2024, he fetched his trailer in the park to return to pick up his vehicle.
 - 18.3 Arriving at the gate at 3 minutes before 5pm, the security guard (subsequently identified as Mr Mphahlele) informed him that entry is only permitted after five o’clock. Eight percent of the race vehicles had already left the Pit Area.
 - 18.4 He waited until five o’clock and asked if he can proceed to enter.
 - 18.5 Mr Mphahlele told him that he must wait until all the races are done and that there were still two races to go. This is where the argument started and had Mr Mphahlele provided him with the correct information, the incident would not have happened.
 - 18.6 He admitted to being “a bit aggressive”, being “quite upset” because “Mr Mphahlele did not speak properly and let us know”. He stated that he is not an aggressive person.
 - 18.7 He denied that he touched anyone.
 - 18.8 He told a woman, who was seated in her white vehicle, who leaned out of the window and said that the guy is just doing his job and in response he stepped closer telling her to stay out of it.
 - 18.9 A woman then arrived at the gate, whom he assumed was from Zwartkops “personnel”, who “got the tail end of the story instead of asking what the situation was, just aggravate the incident”.
 - 18.10 He admitted to the two women telling him to “stop this foolishness” and he explained his version of the situation to them.
 - 18.11 He denied that he engaged in an altercation with both women, apart from his brief interaction in paragraph 18.8 above. He did not respond to the other woman subsequently identified as Ms Meadows when she spoke to him. He denied being in the personal space of either women, as they allege.
 - 18.12 With his altercation, Mr Mphahlele had told him to enter at the top gate. He drove to the top gate and asked the security to enter on the basis that Mr Mphahlele said that he can enter after 5pm at which time Ms Meadows arrived. He accepted that he could not enter with this trailer, unhooked it closeby, proceeded to the second gate and entered with his vehicle. He waited until the last race and loaded his race vehicle.
 - 18.13 He apologised for the incident but the security people need to be properly trained and informed. They can be unnecessarily arrogant.
 - 18.14 He did not lunge at Mr Mphahlele. He only argued with him.
 - 18.15 He cannot confirm or deny the words that he used. If he did, he apologised.
 - 18.16 Mr Mphahlele did not wear any uniform but he accepted that he was the security gate guard and that security controls access at the gate he wanted to enter.
 - 18.17 He accepted that when entering an event, he is bound by all rules and regulations that govern that event.
 - 18.18 He admitted that he pushed the gate to gain entry. He had tried to gain access on both gates.

- 18.19 It was clarified during the hearing that Mr Beens was not part of and did not know about the official WhatsApp Group. **Mr Botes** informed, which Mr Beens did not reject, that the Final Instructions document was posted on a different HRSA WhatsApp Group too to which Mr Beens belongs since he started racing in 2016. Mr Beens informed however that he did not have sight of the Final Instructions document.
- 18.20 If he was wrong, he apologised and will accept any punishment. With the racing and his broken race vehicle on the day which was his first event for 2024, he had become short-tempered.
19. Mr Beens' evidence was found wanting on details without reason. His apologies for wrongful behaviour was however forthcoming.

ANALYSIS

The regulatory framework

20. The participation of motorsport competitors in events managed by MSA is based on the law of contract. MSA has the sporting authority and is the ultimate authority to take all decisions concerning organizing, direction, and management of motorsport in South Africa.
21. The contractual relationship between Mr Beens and MSA arises from the Official Entry Form that he concluded and signed as both an Entrant² and Competitor³ to the Event in addition to being a holder of a valid Licence⁴. Through the Official Entry Form, Mr Beens agreed to be bound by the GCR's.
22. Of significance, when Mr Beens signed the Official Entry Form, he agreed that amongst other things:
- 22.1 As an Entrant, he holds the appropriate licence and is bound by the provisions of the sporting codes applicable to the event, such agreement being signified by the signature of the holder on the licence. [Rule 113 i) and ii)]
- 22.2 As a Driver, he was aware of the articles, rules and regulations governing the Event. In particular, he was aware of the contents of the GCRs and bound by them, such agreement being signified by the signature of the holder on the licence application form. [Rule 121 xii) read with xiii)]
- 22.3 He is deemed to have made himself acquainted with the GCRs and submitted himself, without reserve, to the consequences resulting from the GCRs and to pay as liquidated

² "**Entrant**" means any person, persons or body who enters a vehicle in a competition and who is in possession of a licence. [GCR 22]

³ "**Competitor**" means any person or body whose entry is accepted for, or who competes in any competition, whether as an entrant, driver, co-driver, navigator, passenger, or rider, provided that ..." [GCR 19]

"**Driver**" means any person who drives/rides any vehicle/machine in competition and who is in possession of a licence... [GCR 21]

⁴ "**Licence**" means the written authority given by MSA to:

i) Any competitor to participate in, or to take part in, in any capacity whatsoever, in any competition; and

ii) ...

[GCR 20]

- 22.4 damages any fines or costs imposed upon him within the maxima set out in Appendix R. [Rule 122 i) and ii)]
23. Consequently, Mr Beens is bound to the GCR's in addition to the Standing Supplementary Regulations of MSA for Circuit, the SRs for the Event, the Final Instructions and the MSA Safeguarding Policy.

Evaluation of the Evidence

24. The totality of evidence, including Mr Beens, concludes the following undisputed facts:

Mr Mphahlele, in the employ of Skyral Security, was on duty at the Event on 24 August 2024. He was approached by Mr Beens who arrived at the gate at which he was stationed which had resulted in an obstruction to all vehicles trying to exit the Pit Area. Mr Beens wanted to enter the Pit Area with his vehicle, attaching a trailer, to collect his race vehicle. Mr Mphahlele stopped him from doing so as directed by the SOP which he was responsible to implement. Mr Beens knew or reasonably ought to have known the rule which prohibited him from entering the Pit Area at that time. Mr Beens accepted that Mr Mphahlele, as security, controlled access to the Pit Area at the gate where the incident occurred. Despite such knowledge, Mr Beens refused to respect and abide by Mr Mphahlele enforcing the rule and demanded to enter the Pit Area. By Mr Beens' own admission, 'an argument' ensued causing 'an incident' for which he apologised pursuant to this process.

25. Mr Mphahlele, Ms Robinson and Ms Meadows gave clear evidence about the nature and extent of Mr Beens' misconduct. He was witnessed to have been extremely aggressive, having sworn and trying to physically attack Mr Mphahlele; he was also seen to have screamed at everybody; he forcefully slammed the exit gate open with no regard for any bystander; and he engaged in a confrontation with Ms Robinson who did no more than tell him to calm down because Mr Mphahlele was simply doing his job. Based on the evidence, the Court finds Mr Beens to have committed serious prejudicial acts of intimidation, verbal abuse with an intent to cause physical harm, and publicly offensive and inappropriate conduct which also constitutes no less than gross misbehaviour.
26. Mr Beens, having been involved in racing for several years, knew or reasonably ought to have known that his conduct was inappropriate, unacceptable and prejudicial to the interests of motorsport. His attempts to explain his behaviour fails to justify his misconduct at all.
27. MSA is committed to ensure a safe environment in which *all* individuals are treated with respect and dignity. These commitments are mirrored in the policies of both the South African Sports Confederation and Olympic Committee and the *Federation Internationale De L'Automobile* to which MSA is a member. Unjustified misconduct, such as that of Mr Beens under enquiry, violates the sporting environment and the integrity and reputation of MSA. Respect is paramount in the motorsport community for *all* participants including the support staff. Creating an environment of mutual respect and appreciation is essential as it fosters teamwork and enhances the overall spirit and safeguarding of the sport.

FINDINGS AND CONSEQUENTIAL ACTION

28. In the result, the Court finds Mr Beens guilty of breaching GCRs 172 iv) and vi).
29. Having due regard to, amongst other things, the remorse shown and submissions made by Mr Beens as a first offender, the nature, extent and seriousness of the breach, and the gross violation of the rules that governed the Event, the Court finds Mr Beens liable to the following penalties and costs:
 - 29.1 Payment of a fine in the sum of R20,000.00 (twenty thousand Rand);
 - 29.2 Mr Beens is precluded under GCR 184 from participating in any motorsport competition, that falls under the administration and control of MSA, in any capacity whatsoever until and including 31 March 2025; and
 - 29.3 Payment of R2,500.00 (two thousand five hundred Rand) as a contribution towards any costs incurred by MSA in convening this enquiry.
30. Mr Beens is reminded to pay the fine and costs imposed in accordance with GCR 222 read with GCR 180.
31. Mr Beens is further reminded of his rights in terms of GCR 211 ii).

All parties are reminded of their rights in terms of GCR 212B.

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